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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

JOHN HOWARD LAWSON,	*Petitioner,*	
vs.		No. 248
UNITED STATES OF AMERICA,	*Respondent.*	
DALTON TRUMBO,	*Petitioner,*	
vs.		No. 249
UNITED STATES OF AMERICA,	*Respondent.*	
EDWARD K. BARSKY, *et. al.*,	*Petitioner,*	
vs.		No. 766
UNITED STATES OF AMERICA,	*Respondent.*	
GEORGE MARSHALL,	*Petitioner,*	
vs.		No. 197
UNITED STATES OF AMERICA,	*Respondent.*	
RICHARD MORFORD,	*Petitioner,*	
vs.		No. 236
UNITED STATES OF AMERICA,	*Respondent.*	
HELEN PARKER, *et al.*,	*Petitioner,*	
vs.		No. 49
COUNTY OF LOS ANGELES, *et al.*,	*Respondent.*	

MOTION FOR LEAVE TO FILE AND BRIEF OF THE CONGRESS OF AMERICAN WOMEN AS AMICUS CURIAE ON PETITIONS FOR WRITS OF CERTIORARI

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TO THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES AND ASSOCIATE JUSTICES THEREOF.

These cases present important questions affecting the breadth of the protection afforded by the First Amendment. Upon their determination may very well depend the preservation of the guarantees of speech from alteration by ingenious maneuvers designed to circumvent the

protective principles which this Court has declared guard the liberties embodied in the First Amendment.

The Congress of American Women, dedicated as it is to the maintenance of these basic freedoms, seeks to appear here as amicus curiae so that it may call attention to the broad implications and effect of the decisions below upon the course of civil liberties in this country.

Consents to the filing of this brief have been received from the Attorney General of the United States, and from each of the respondents, except respondent Marshall, from whom no response had been received at this date. The County Counsel of Los Angeles has granted only a qualified consent. The Congress of American Women, therefore respectfully prays that it be permitted to file the attached brief as amicus curiae.

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BRIEF OF THE CONGRESS OF AMERICAN WOMEN AS AMICUS CURIAE ON PETITIONS FOR WRITS OF CERTIORARI

STATEMENT

The Congress of American Women is the American branch of the Women's International Democratic Federation, an organization of 81,000,000 women representing fifty-seven nations of the world. This great assemblage of women was constituted at the close of the last war to extend and protect the frontiers of democracy, and to work for the establishment of such conditions of social, economic and

political well-being, that women everywhere might fearlessly bear their children and live with their families in security, freedom and peace. Recognizing, in the best tradition of American democracy, that it is only in a climate in which the opportunity exists for a free trade in the marketplace of ideas, that these objectives may be achieved, this organization adopts as one of its prime objectives the fostering and defense of the civil rights and liberties of the people of the United States.

The history and background of these five prosecutions reveals a shocking incursion by government in the liberties absolutely reserved by the people to themselves by the Bill of Rights. They typify a form of political repression that has recently spread like a rash across the face of this country. The petitioners herein represent the first victims — and are yet only a scattered sampling — of a brutal, fascist philosophy of government, which has as its objective the establishment of a single standard of thought and expression, acceptance of which, and conformity to which, is coerced by any means, fair or foul, including economic sanctions, exposure to public obliquy, and the terrible threat of prosecution and imprisonment.

It has always been our belief that the first premise of our American freedom was bottomed on the tenet that:

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein." (*Board of Education v. Barnette,* 319 U. S. 624, 642.)

Rejection of the doctrines hereinabove expressed has once before, of recent memory, plunged many nations into the darkness of fascism and catapulted the entire world into the horror of a fascist-conceived war. It is these considerations, and concern for the prevention of like consequences, that impel this organization to submit this brief amicus curiae.

ARGUMENT

The essence of democracy lies in the sovereignty of the people over their government; a belief in its principles is based upon a reliance on the reason and judgment of the entire people, a confidence in the superiority of such collective reason and judgment over the wisdom of any particular individual or group. In order to realize democracy, it is essential that the minds of the people remain wholly independent of government itself. For if the government can direct or control or, by coercive methods, influence the popular judgment, ultimate political power has, in essence, been transferred from the people themselves to the government which was to be subject to their direction, and the essential basis of democracy has thus been lost.

It was for this reason, that the Constitution excluded government entirely from the exercise of powers in the domain of ideas. The very foundation upon which the Constitution rests requires that the government be forbidden to interfere in any way with what people might believe, hear, discuss and read, be prohibited from cutting off any phase of the nourishment for the processes of human thought.

When the Constitution was first proposed, the exemption of the area of expression from the sphere of governmental authority was not made explicit in its terms. The people who were then asked to ratify it refused to leave so vital a matter to implication. They would not accept the assurances of those who had written it that the exemption was intended. The guarantee which they extracted appears in the Constitution in the unequivocal language of the First Amendment:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

There is no equivocation in this language; it boldly and forthrightly declares that Congress shall make *no law* abridging the freedom of speech, *no law* prohibiting the free exercise of religion, *no law* limiting the freedom of press, of peaceable assembly and petition.

In light of the purposes for which it was adopted, it could not have been otherwise. For the slightest limitation would, in effect, destroy the guarantee. If such a limitation existed, government, acting through its legislature, its executive, its courts, would necessarily be empowered to determine its scope. By extending or restricting the limitation, government could then extend or restrict the freedom itself. The independence of the people's will from government control would thus be placed at the mercy of government itself; popular sovereignty over government would be effectively replaced by government dominion over the minds of men.

The strict adherence of the United States to the basic principles of its form of government is further expressed by its proposals to the other nations of the world in the United Nations assembled, following upon the war to end the tyranny of Hitler fascism. Among the proposals for a Declaration on Human Rights, the American representative suggested:

> "Everyone has the right to freedom of information, speech and expression, to freedom of religion, conscience, and belief; to freedom of assembly and of association; and to freedom to petition his Government and the United Nations."

To the draft covenant on Human Rights, the representative of the United States proposed:

> "Everyone shall have the right to freedom of information, speech and expression. Everyone shall be free to hold his opinion without molestation, to receive and seek information and the opinion of others from sources wherever situated, and to disseminate opinions and information, either by word, in writings, in the Press, in books or by visual, auditive or other means."

Seen in this light, the enabling resolution of the House Committee on Un-American Activities, its activities, its inquiries, the establishment, existence and functions of "loyalty" boards, state or federal, "loyalty" oaths and "loyalty" investigations, are in patent violation of the Constitution, and constitute a usurpation of power by the legislative and executive branches of the government which promulgate and foster them.

Stripped of all their trappings, the naked truth of these witch-hunts is that the government is invested with the power to punish thought, speech, advocacy and association, whenever it sees fit to do so. It gives the government the power to enter the market-place of ideas from which the Constitution excluded it.

For the last decade the House Committee on Un-American Activities has conducted a limitless inquiry — from which these prosecutions result — into the beliefs, associations and opinions of the American people. The Committee demands conformity, complete and absolute support for government policies, foreign or domestic. Conversely, the Committee has endeavored to suppress every idea of social change, to persecute, pillory and stigmatize every individual or organization opposed to the policies of government. These same tactics and inquiries are carried over by Federal and State "loyalty" boards under the guise of employing in government positions "non-subversive" persons only. The total effect of these so-called "investigations" of subversion cannot be overlooked as serious depredations on the fundamental rights of Americans, with profound restrictive effects on their freedom of thought and action. Two judges of the Circuit Court have voiced their observations on the inroads which the Committee has made on freedom of opinion and conduct.

> "Here there can be no doubt of that intended and actual consequence of the investigation. The Committee announces its desire that the persons it finds guilty shall forfeit their jobs in public and private industry and shall be subject to

prosecution for any collateral crimes which may have been disclosed, and generally shall be exposed pitilessly to public condemnation. That it is successful in its purpose the daily papers show. There can be no doubt of the obvious and direct abridgment of the right freely to speak and express one's opinion which is thus achieved." (Clark, J., dissenting in *United States* v. *Josephson,* 165 F.(2) 82,100 (CCA 2d, 1947), *Cert. den.* 68 S. Ct. 609.)

"That the Committee's investigation does in fact restrict speech is too clear for dispute. The prosecution does not deny it and the Court concedes it. The effect is not limited to the people whom the Committee stigmatizes or calls before it, but extends to others who hold similar views and to still others who might be disposed to adopt them. It is not prudent to hold views or to join groups that the Committee has condemned. People have grown wary of expressing any unorthodox opinions. No one can measure the inroads the Committee has made in the American sense of freedom to speak. There has been some suggestion that it restrains only timid people. I think it is nearer the truth to say that, among the more articulate, it affects in one degree or another all but the very courageous, the very orthodox, and the very secure. (Edgerton, J., dissenting in *Barsky v. United States,* 167 F. (2) 241, 254, 255 (App. D.C., 1947), *cert. den.* 68 S. Ct. 155, petition for rehearing pending.)

Such a tampering with fundamental guarantees must not be permitted. It devolves on this Court to strike down these unconstitutional invasions of freedom of conscience, belief, thought, speech and association, and reaffirm the right of the people to express themselves freely and without fear, that they may themselves, after open discussion and free communication, sit in judgment of the issues before them.

CONCLUSION

The Congress of American Women, therefore, urges that this Court grant the Petitions for Certiorari herein, take jurisdiction of the cases and reverse the decisions below.

Dated: New York, New York
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Respectfully submitted,

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